



Members of BASF's Legal Ethics Committee

Photo by Jim Block

THE EVOLUTION OF BASF'S LEGAL ETHICS COMMITTEE

Kathleen Guthrie Woods

As the general membership of The Bar Association of San Francisco (BASF) has evolved, so has the Legal Ethics Committee's roster, which hosts a diversity of genders, ages, ethnicities, and fields of practice. "It's important to have new blood to keep things fresh," says three-year member Maria Yuen, of the Stein Law Group, and as a result, the committee is experiencing a resurgence of interest and activity. This couldn't happen at a better time since the legal industry is facing uncharted territory with issues that spring from advances in technology, the globalization of legal practices, and the proliferation of social media (see related article on page 24).

At its core, the committee offers guidance to attorneys on topics ranging from potential conflicts of interest to determination of attorney-client relationships to questions about trust accounts and every conceivable issue in between. At monthly meetings, members manage BASF's ethics hotline, debate issues, issue opinions, and develop CLE seminars.

Dianne Jackson McLean, who provides ethics advice for Goldfarb & Lipman as the firm's conflicts person, joined the committee for dialogue with professors and attorneys from various practices, to benefit from their depth of knowledge and experience, and to pick up practical tips. "Books provide only part of the picture," she says.

“There’s a whole area of law based on the rules (California Rules of Professional Conduct), [however, the work—the] things you normally do—changes every day, and the rules haven’t caught up.” Debate is needed, guidance is needed. “Ethics is an important area of law,” says the current chair, Cooper, White & Cooper’s Andrew Dilworth. And while “a lot of this stuff is accessible now with technology, you have to know what it is and where to look for it.” The committee’s intention, he says, “is to provide direction or information about resources to help with issues.”

The committee’s efforts are especially beneficial for new attorneys and solo practitioners who may not have the experience or resources to research on their own. Outreach to young attorneys is crucial to make them aware of the services offered and to invite them to join the discussions. “I tell my students ethical conundrums are going to arise or you’ll be dealing with people who will bring them up,” says William Balin of Balin & Kotler, an adjunct professor at the University of San Francisco School of Law, Golden Gate University School of Law, and UC Hastings College of the Law. “You can close your eyes or you can take a more active role,” he says.

Yuen was one of the students Balin inspired. After law school they kept in touch and she became interested in doing malpractice work as a way of “knowing the ins and outs to keep myself out of trouble.” She volunteered to work on cases with Balin when he was chair of the committee and watched with excitement as the group evolved from six or seven long-time members to its current roster of twenty-five, representing a mix of ages, genders, and attorneys from different size firms. Each participant brings a different viewpoint, and Yuen notes the importance of including younger attorneys, who face different challenges from attorneys who started their practices just ten years ago and confront issues that arise as we become more tech savvy.

Sarah Banola, who specializes in professional responsibility at Cooper, White & Cooper, keeps coming back for the opportunities to brainstorm and discuss issues with more seasoned attorneys, what she describes as a “comfortable group.” She encourages new and young attorneys

IF YOU HAVE AN ISSUE FOR THE COMMITTEE . . .

To submit an issue through BASF’s ethics hotline, first visit www.sfbar.org/legal-ethics and download a disclaimer form. Complete the form and fax it to 415-477-2388, then call the BASF receptionist at 415-982-1600 and you will be referred to the volunteer attorney who is on call.

IF YOU WOULD LIKE TO BE PART OF THE COMMITTEE . . .

BASF’s Legal Ethics Committee meets at noon at the BASF office the fourth Tuesday of every month. Visit www.sfbar.org/legal-ethics for more information.

IF YOU WOULD LIKE TO PARTICIPATE IN A MONTHLY MEETING BUT CANNOT ATTEND IN PERSON . . .

On the day of the meeting, call 415-782-9000 x8811. Follow the voice prompts to be included in the conference call. You’ll be able to listen and contribute to the discussion.

to bring up any questions they have, knowing that they will be heard and responded to respectfully.

Led by a chair, vice chair, secretary, and communications coordinator, the committee is open to anyone who wants to participate. “Membership is fluid,” says Dilworth, with about fifteen attendees at each monthly meeting, allowing members to participate around busy schedules. “The common denominator is [that] many of the members deal with ethics issues in their practices, for example, when part of their practice is representing other attorneys,” says Dilworth. But having a legal malpractice, family law, or criminal defense practice is not a requirement for mem-

bership. “Ethics is in every aspect of the practice of law,” says Balin. “Sometimes (issues) rise up in transactional law, so all kinds of perspectives are needed,” he says. Recent attendees include representatives from big and midsize firms as well as solo practices, someone from the State Bar Ethics Committee, and law school professors and adjunct professors. It’s interesting to note, says McLean, that if not for the committee, “our paths wouldn’t have crossed.” Now they cross regularly and all participants benefit from their colleagues’ unique experiences.

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The monthly meetings run ninety minutes. Together, the attendees work on ethics opinions in various stages of development, brainstorm and develop topics for CLE seminars and materials, and discuss ethics issues that are brought to the attention of the group by callers to the hotline, by the members themselves, or are prompted by changes to the Rules of Conduct.

The process for issuing a formal ethics opinion can take several months as members choose topics, research, dis-

cuss, elicit input, debate, consider how courts might decide, and ultimately reach some kind of consensus. “The more input the better,” says Dilworth. Several topics are in various stages of development at any one time. To be clear, an opinion is not law; it is not legally binding, but advisory only. “It can,” however, says Dilworth, “be instructive, and it can be cited in court.” Opinions dating back to 1970 are posted on BASF’s website.

“We discuss,” says McLean, and while the group doesn’t always agree, members remain “friendly, very cordial.” Back in the early years of the committee, “the arguments were heated,” says Balin. “It’s more congenial now. Issues

may come up, disputes may happen, [but] it’s always renewing, and the research and arguments are interesting.” From these debates, the committee develops CLE programs and materials. Brainstorming sessions result in the introduction of topics that cover a broad range of interests, such as, “Let’s do a CLE on the use of cloud software!” says Yuen. Helping to develop new seminars has a side benefit for the participating attorneys. “When you volunteer, it helps you focus and learn, and it’s fulfilling,” says Yuen. “It makes you a bit of an ‘expert’ because you gain in-depth knowledge of the area, and you can apply this knowledge and experience to client work.” Banola adds that putting together CLE programs “gives members opportunities for presenting and writing experience in their areas of interest—with an ethics twist.”

Many issues for consideration, discussion, and development are brought to the committee’s attention by callers to BASF’s hotline. Separate from the state bar’s hotline, BASF’s hotline is overseen by the committee and staffed

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— William Balin

by volunteers (committee members) who sign up to cover two-week periods. The purpose is to assist attorneys who have questions relating to their ethical responsibilities, and the calls are confidential.

“We all study the rules in law school, but the application in real-world scenarios is more complicated,” says Dilworth, and “attorneys in specific areas of practice have a familiarity with the resources, including the Rules of Conduct, other opinions out there, and case law with respect to ethics-related issues.” BASF’s hotline is valuable because “if you are a solo or new attorney, you may not have immediate access to various ethics-related materials that a large firm would have,” says Dilworth. When you call the hotline, it’s like tapping into a research department. This service is the cornerstone of what the committee offers to BASF members.

Committee members are enthusiastic about their participation in the meetings, their contributions to the services offered, and their roles in the evolution of this group, all factors that have led to a diversified and reenergized committee. “During meetings, during discussions, we all throw out ideas,” says Yuen, and newcomers are encouraged to jump right in. “If you are new to the ethics area, you are not judged for your questions. No one says ‘Don’t you know that?’ There’s no attitude.”

“We really welcome new people’s participation and involvement,” says Dilworth, and he hopes to hear new voices in future meetings. “It is a valuable experience for any attorney regardless of area of practice. Everyone’s got something useful to offer.” Plus, Balin adds, “The meetings are really very fun.”

Kathleen Guthrie Woods is a San Francisco–based freelance writer.

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